IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2576 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHEDA DISTRICT CO-OP. MILK PRODUCERS UNION LTD

Versus

ANWARALI KASAMALI SAIYED

Appearance: 1. Special Civil Application No. 2576 of 1994
MR DEEPAK V PATEL for Petitioner No. 1
MR SK BUKHARI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 15/07/2004

ORAL JUDGEMENT

#. Petitioner-Kheda District Co-op. Milk Producers Union Ltd. (Amul Dairy) at Anand has challenged in this petition the impugned judgment and award dated 23.11.1993 passed by the Labour Court, Anand in Reference No.152/92 whereby the Labour Court partly allowed the reference in favour of the respondent-workman and ordered the petitioner to reinstate him in service with 40% back

wages and to grant continuity of service with cost of Rs.200/-. Misconduct alleged against the respondent-workman was to assault his superior while on duty for which the respondent-workman was prosecuted in court of law in Criminal Case No.4980/84. It seems that the respondent-workman was acquitted by the competent criminal court. However, in departmental proceedings, he was found guilty for this very misconduct. The Labour Court also found the finding recorded by the disciplinary authority to be proper and legal. However, the Labour Court was of the opinion that the maximum penalty of dismissal from service was highly disproportionate to the misconduct committed by the respondent-workman. Therefore, ordered to reinstate the respondent-workman in service with 40% back wages without imposing any penalty of the misconduct which is found to be proved against the respondent-workman. This impugned judgment and award dated 23.11.1993 passed by the Labour Court, Anand in Reference No.152/92 is challenged in this petition in 1994. On 23.2.1996 the learned Single Judge of this court issued rule on this petition and granted interim relief granted in terms of para 10(B) of this petition. Thus, the impugned judgment and award passed by the Labour Court has remained stayed till today.

#. This petition was initially placed before this court on 25.6.2004. On that day learned counsel Mr.Bukhari for the respondent-workmen submitted that the workman was out of job since 1984 and though the Labour Court ordered to reinstate him way back in 1993, he is not in service because of the stay granted by this court. He submitted that he is a poor workman and even today he is without job. He also submitted that if he is taken back in service, then he will not claim even 40% of back wages awarded by the Labour Court. In view of this, learned counsel Mr.Chauhan prayed for time to consider the proposal made by Mr.Bukhari for the respondent-workman and accordingly the matter was adjourned.

#. Today, learned counsel Mr.Chauhan stated at the Bar that the proposal made by the respondent-workman is accepted by the petitioner and they are ready to take back the respondent-workman in service without back wages on the post on which he was working with continuity in service and that this order shall not be treated as precedent.

#. In view of the above, this petition is partly allowed to the extent that the impugned judgment and award dated 23.11.1993 passed by the Labour Court, Anand in reference No.152/92 awarding 40% back wages to the

respondent-workman while reinstating him in service is hereby quashed and set aside on the statement being made at the Bar by learned counsel Mr.Chauhan for the petitioner that the petitioner shall reinstate the respondent-workman in service latest by 1.8.2004 on his original post with continuity in service without back wages. It goes without saying that this order is passed on the peculiar fats and circumstances of the case, therefore, it will never become precedent much less binding precedent. Rule is made absolute to the aforesaid extent only. No order as to costs.

(B.J.Shethna, J.)

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